

106TH CONGRESS
2D SESSION

H. R. 4586

To amend the Consumer Product Safety Act and the Federal Hazardous Substances Act regarding repair, replacement, or refund actions, civil penalties, and criminal penalties under those Acts.

IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 2000

Mr. MARKEY (for himself, Mrs. CAPPS, Mr. LUTHER, and Mr. EVANS) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To amend the Consumer Product Safety Act and the Federal Hazardous Substances Act regarding repair, replacement, or refund actions, civil penalties, and criminal penalties under those Acts.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION. 1. SHORT TITLE.**

4 This Act may be cited as the “Consumer Product
5 Safety Commission Enhanced Enforcement Act of 2000”.

6 **SEC. 2. REPAIR, REPLACEMENT, OR REFUND.**

7 (a) Section 15(d) of the Consumer Product Safety
8 Act (15 U.S.C. 2064(d)) is amended—

1 (1) by striking “If” in the first sentence and in-
2 serting “Subject to the last 2 sentences of this sub-
3 section, if”; and

4 (2) by adding at the end the following: “If the
5 Commission determines (after affording opportunity
6 for an informal hearing) that the action that the
7 manufacturer, distributor, or retailer has elected to
8 take under paragraph (1), (2), or (3) is not in the
9 public interest, the Commission shall order the man-
10 ufacturer, distributor, or retailer to take whichever
11 other action specified in paragraph (1), (2), or (3)
12 that the Commission determines to be in the public
13 interest. If the Commission determines that both of
14 the remaining actions specified in paragraph(1), (2),
15 or (3) are in the public interest, the Commission
16 shall order the manufacturer, distributor, or retailer
17 to take whichever of those actions the manufacturer,
18 distributor, or retailer elects.”.

19 (b) Section 15(b) of the Federal Hazardous Sub-
20 stances Act (15 U.S.C. 1274(b)) is amended—

21 (1) by striking “If” in the first sentence and in-
22 serting “Subject to the last 2 sentences of this sub-
23 section, if”; and

24 (2) by adding at the end the following: “If the
25 Commission determines (after affording opportunity

1 for an informal hearing) that the action that the
2 manufacturer, distributor, or dealer has elected to
3 take under paragraph (1), (2), or (3) is not in the
4 public interest, the Commission shall order the man-
5 ufacturer, distributor, or dealer to take whichever
6 other action specified in paragraph (1), (2), or (3)
7 that the Commission determines to be in the public
8 interest. If the Commission determines that both of
9 the remaining actions specified in paragraph (1),
10 (2), or (3) are in the public interest, the Commission
11 shall order the manufacturer, distributor, or dealer
12 to take whichever of those actions the manufacturer,
13 distributor, or dealer elects.”

14 (c) Section 15(c)(2) of the Federal Hazardous Sub-
15 stances Act (15 U.S.C. 1274(c)(2)) is amended—

16 (1) by striking “If” in the first sentence and in-
17 serting “Subject to the last 2 sentences of this sub-
18 section, if”; and

19 (2) by adding at the end the following: “If the
20 Commission determines (after affording opportunity
21 for an informal hearing) that the action that the
22 manufacturer, distributor, or dealer has elected to
23 take under subparagraph (A), (B), or (C) is not in
24 the public interest, the Commission shall order the
25 manufacturer, distributor, or dealer to take which-

1 ever other action specified in subparagraph (A), (B),
 2 or (C) that the Commission determines to be in the
 3 public interest. If the Commission determines that
 4 both of the remaining actions specified in subpara-
 5 graph (A), (B), or (C) are in the public interest, the
 6 Commission shall order the manufacturer, dis-
 7 tributor, or dealer to take whichever of those actions
 8 the manufacturer, distributor, or dealer elects.”.

9 **SEC. 3. CIVIL PENALTIES.**

10 (a) Section 20(a) of the Consumer Product Safety
 11 Act (15 U.S.C. 2069(a)) is amended to read as follows:

12 “(a) AMOUNT OF PENALTY.—

13 “(1) Any person who knowingly violates section
 14 19 shall be subject to a civil penalty not to exceed
 15 \$7,000 for each such violation. Subject to paragraph
 16 (2), a violation of paragraph (1), (2), (4), (5), (6),
 17 (7), (8), (9), (10), or (11) of section 19(a) shall con-
 18 stitute a separate offense with respect to each con-
 19 sumer product involved. A violation of section
 20 19(a)(3) shall constitute a separate violation with re-
 21 spect to each failure or refusal to allow or perform
 22 an act required thereby, and, if such violation is a
 23 continuing one, each day of such violation shall con-
 24 stitute a separate offense.

1 “(2) The second sentence of paragraph (1) shall
2 not apply to violations of paragraph (1) or (2) of
3 section 19(a)—

4 “(A) if the person who violated such para-
5 graph is not the manufacturer or private labeler
6 or a distributor of the product involved, and

7 “(B) if such person did not have either—

8 “(i) actual knowledge that such per-
9 son’s distribution or sale of the product
10 violated such paragraph; or

11 “(ii) notice from the Commission that
12 such distribution or sale would be a viola-
13 tion of such paragraph.

14 “(3)(A) The penalty amount authorized in
15 paragraph (1) shall be adjusted for inflation by in-
16 creasing the amount referred to in paragraph (1) by
17 the cost-of-living adjustment for the preceding 5
18 years. Any increase determined under the preceding
19 sentence shall be rounded up to—

20 “(i) in the case of a penalty amount less
21 than or equal to \$10,000, the nearest multiple
22 of \$1,000;

23 “(ii) in the case of a penalty amount great-
24 er than \$10,000, the nearest multiple of
25 \$5,000.

1 “(B) Not later than December 1, 2005, and
2 December 1 of each 5th calendar year thereafter,
3 the Commission shall prescribe and publish in the
4 Federal Register the authorized penalty amount that
5 shall apply for violations that occur after January 1
6 of the year immediately following such publication.

7 “(C) For purposes of subparagraph (A):

8 “(i) The term ‘Consumer Price Index’
9 means the Consumer Price Index for all urban
10 consumers published by the Department of
11 Labor.

12 “(ii) The term ‘cost-of-living adjustment
13 for the preceding 5 years’ means the percentage
14 by which—

15 “(I) the Consumer Price Index for the
16 month of June of the calendar year pre-
17 ceding the adjustment exceeds

18 “(II) the Consumer Price Index for
19 the month of June preceding the date on
20 which the maximum authorized penalty
21 was last adjusted.”.

22 (b) Section 5(c) of the Federal Hazardous Substances
23 Act (15 U.S.C. 1264(c)) is amended to read as follows:

24 “(c) CIVIL PENALTIES.—

1 “(1) Any person who knowingly violates section
2 4 shall be subject to a civil penalty not to exceed
3 \$7,000 for each such violation. Subject to paragraph
4 (2), a violation of subsection (a), (b), (c), (d), (f),
5 (g), (i), (j), or (k) of section 4 shall constitute a sep-
6 arate offense with respect to each substance in-
7 volved. A violation of section 4(e) shall constitute a
8 separate violation with respect to each failure or re-
9 fusal to allow or perform an act required by section
10 4(e), and if such violation is a continuing one, each
11 day of such violation shall constitute a separate of-
12 fense.

13 “(2) The second sentence of paragraph (1) of
14 this subsection shall not apply to violations of sub-
15 section (a) or (c) of section 4—

16 “(A) if the person who violated such sub-
17 section is not the manufacturer, importer, or
18 private labeler or a distributor of the substance
19 involved; and

20 “(B) if such person did not have either—

21 “(i) actual knowledge that such per-
22 son’s distribution or sale of the substance
23 violated such subsection, or

1 “(ii) notice from the Commission that
2 such distribution or sale would be a viola-
3 tion of such subsection.

4 “(3) In determining the amount of any penalty
5 to be sought upon commencing an action seeking to
6 assess a penalty for a violation of section 4, the
7 Commission shall consider the nature of the sub-
8 stance, the severity of the risk of injury, the occur-
9 rence or absence of injury, the amount of the sub-
10 stance distributed, and the appropriateness of such
11 penalty in relation to the size of the business of the
12 person charged.

13 “(4) Any civil penalty under this subsection
14 may be compromised by the Commission. In deter-
15 mining the amount of such compromised penalty or
16 whether it should be remitted or mitigated and in
17 what amount, the Commission shall consider the ap-
18 propriateness of such penalty to the size of the busi-
19 ness of the persons charged, the nature of the sub-
20 stance involved, the severity of the risk of injury, the
21 occurrence or absence of injury, and the amount of
22 the substance distributed. The amount of such pen-
23 alty when finally determined, or the amount agreed
24 on compromise, may be deducted from any sums
25 owing by the United States to the person charged.

1 “(5) As used in the first sentence of paragraph
2 (1), the term ‘knowingly’ means—

3 “(A) having actual knowledge, or

4 “(B) the presumed having of knowledge
5 deemed to be possessed by a reasonable person
6 who acts in the circumstances, including knowl-
7 edge obtainable upon the exercise of due care to
8 ascertain the truth of representations.

9 “(6)(A) The penalty amount authorized in
10 paragraph (1) shall be adjusted for inflation by in-
11 creasing the amount referred to in paragraph (1) by
12 the cost-of-living adjustment for the preceding 5
13 years. Any increase determined under the preceding
14 sentence shall be rounded up to—

15 “(i) in the case of a penalty amount less
16 than or equal to \$10,000, the nearest multiple
17 of \$1,000;

18 “(ii) in the case of a penalty amount great-
19 er than \$10,000, the nearest multiple of
20 \$5,000.

21 “(B) Not later than December 1, 2005, and
22 December 1 of each 5th calendar year thereafter,
23 the Commission shall prescribe and publish in the
24 Federal Register the authorized penalty amount that

1 shall apply for violations that occur after January
2 1 of the year immediately following such publication.

3 “(C) For purposes of subparagraph (A):

4 “(i) The term ‘Consumer Price Index’
5 means the Consumer Price Index for all urban
6 consumers published by the Department of
7 Labor.

8 “(ii) The term ‘cost-of-living adjustment
9 for the preceding 5 years’ means the percentage
10 by which—

11 “(I) the Consumer Price Index for the
12 month of June of the calendar year pre-
13 ceding the adjustment exceeds

14 “(II) the Consumer Price Index for
15 the month of June preceding the date on
16 which the maximum authorized penalty
17 was last adjusted.”.

18 **SEC. 4. CRIMINAL PENALTIES.**

19 (a) Section 21 of the Consumer Product Safety Act
20 (15 U.S.C. 2070) is amended to read as follows:

21 “(a) Any person who knowingly violates section 19
22 shall be fined under title 18, United States Code, or be
23 imprisoned not more than 1 year, or both, if such person
24 is an individual, or fined under title 18, United States
25 Code, if such person is an organization (as the term ‘orga-

1 nization’ is defined in section 18 of title 18, United States
2 Code). Any person who knowingly and willfully violates
3 section 19 of this Act shall be fined under title 18, United
4 States Code, or be imprisoned not more than 3 years, or
5 both, if such person is an individual, or fined under title
6 18, United States Code, if such person is an organization.

7 “(b) Any individual director, officer, or agent of a
8 corporation who authorizes, orders, or performs any of the
9 acts or practices constituting in whole or in part a viola-
10 tion of subsection (a) shall be subject to penalties under
11 this section without regard to any penalties to which that
12 corporation may be subject under subsection (a).”.

13 (b) Section 5(a) of the Federal Hazardous Sub-
14 stances Act (15 U.S.C. 1264(a)) is amended to read as
15 follows:

16 “(a) CRIMINAL PENALTIES.—Any person who vio-
17 lates any of the provisions of section 4 shall be guilty of
18 a misdemeanor and shall on conviction thereof be subject
19 to a fine under title 18, United States Code, or to impris-
20 onment for not more than one year, or both, if such person
21 is an individual, or to a fine under title 18, United States
22 Code, if such person is an organization (as the term ‘orga-
23 nization’ is defined in section 18 of title 18, United States
24 Code); but for offenses committed willfully, or for second
25 and subsequent offenses, the penalty shall be imprison-

1 ment for not more than 3 years, or a fine under title 18,
2 United States Code, or both, if such person is an indi-
3 vidual, or a fine under title 18, United States Code, if
4 such person is an organization.”.

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